

**From:** Waye, Don  
**To:** allison.castellan@noaa.gov; Carlin, Jayne  
**CC:** Goo, Robert  
**Sent:** 4/14/2014 5:10:46 PM  
**Subject:** OR CZARA - Draft Questions on using authorities to back up voluntary approaches

Allison & Jayne,

# Ex. 5 - Attorney Client

Background on Enforceable Policies and Mechanisms for CZARA. See:

<http://coastalmanagement.noaa.gov/nonpoint/docs/6217adminchanges.pdf>

and

<http://coastalmanagement.noaa.gov/nonpoint/docs/epmmemo.pdf>

NOAA and EPA will approve those program elements for which states have proposed voluntary or incentive-based programs, backed by existing state enforcement authorities, if the following is provided:

1. a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary;
2. a description of the voluntary or incentive-based programs, including the methods for tracking and evaluating those programs, the states will use to encourage implementation of the management measures; and
3. a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary.

For the NDMM, Oregon DEQ has committed to using one of the following 3 options of direct regulatory actions available to that agency to require DMAs to implement the NDMM, but the agency is not yet willing to commit to exactly which one at this point:

- 1) Develop and implement a post-construction general permit that would meet the NDMM and would align with (or be combined with) Oregon's existing construction site runoff NPDES general permit (1200-C/CN), either through DEQ's permitting authority [ORS 468B.050] or by requesting that the State's Environmental Quality commission (EQC) adopt a rule requiring these permits [ORS 4608B.020].
- 2) Develop a rule for all DMAs to meet the NDMM. The rule would require the adoption of the State's EQC [ORS 468.020; 468B.020; and 468B.110].

- 3) Designate local governments in the coastal nonpoint management area as a regulated MS4 [federal - 40CFR 122.26 and state – ORS 468B.035]
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